

**UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION**

**IN RE: SMITTY'S/CAM2 303 TRACTOR HYDRAULIC FLUID
MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY
LITIGATION**

MDL No. 2936

REMAND ORDER

Before the Panel: Plaintiff in the action listed on Schedule A (*Nationwide Agribusiness Insurance Co.*, or “MDL Coverage Action”), which previously was transferred from the Eastern District of Louisiana to the Western District of Missouri for inclusion in MDL No. 2936, moves under Panel Rule 10.3 for an order remanding the action to the Eastern District of Louisiana. Defendants¹ oppose the motion.

This MDL involves consumer class actions concerning certain Smitty’s tractor hydraulic fluid (“THF”) products² and two related insurance coverage actions.³ The coverage actions seek a judicial declaration as to Nationwide’s rights and obligations under insurance policies issued to defendants Smitty’s and CAM2 with respect to coverage for costs incurred, or to be incurred, as a result of the actions being litigated in MDL No. 2936 and in an earlier settled action (*Hornbeck*) also involving these THF products. We refer to the coverage action involving *Hornbeck* as the *Hornbeck* Coverage Action, and the coverage action involving the actions in MDL No. 2936 as the MDL Coverage Action. On February 8, 2023, the transferee judge suggested remand of the *Hornbeck* Coverage Action, and we then issued an unopposed order remanding that action to the Eastern District of Louisiana. The next month, Nationwide moved the transferee court for a suggestion of remand of the MDL Coverage Action, on the ground that the action previously had been consolidated for all purposes under Rule 42 with the *Hornbeck* Coverage Action and thus remand was required. The transferee court denied a suggestion of remand, based on its determination that “the District Court’s consolidation does not deprive each case of ‘its separate character,’” and Nationwide had not shown that the MDL Coverage Action would no longer benefit from remaining in the MDL.⁴ Plaintiff Nationwide now moves before the Panel for an

¹ Smitty’s Supply, Inc., CAM2 International, Inc., Ed Smith, and Chad Tate.

² See *In re Smitty's/CAM2 303 Tractor Hydraulic Fluid Mktg., Sales Practices and Prods. Liab. Litig.*, 466 F. Supp. 3d 1380 (J.P.M.L. 2020).

³ See MDL No. 2936, Transfer Order, Doc. No. 69, at 1-2 (J.P.M.L. Feb. 5, 2021).

⁴ See *Nationwide Agribusiness Insurance Co. v. Smitty's Supply, Inc.*, No. 21-0072, ECF No. 70 (W.D. Mo. Mar. 2, 2023) (citing *Bank Markazi v. Peterson*, 578 U.S. 212, 214 (2016) and *Hall v. Hall*, 138 S.Ct. 1118, 1130-1131 (2018)).

order remanding the MDL Coverage Action to its transferor court.⁵

In support of its motion, Nationwide again argues that remand of the MDL Coverage Action is required because of its previous consolidation under Rule 42 with the *Hornbeck* Coverage Action and, further, even if not mandatory, remand of the MDL Coverage Action is warranted because of the risk of inconsistent rulings and inefficiencies from having closely related insurance actions proceed in two different district courts. In opposition to remand, defendants argue that the pre-transfer consolidation of the two coverage actions does not control the issue of remand, and pretrial proceedings in the MDL Coverage Action have not concluded.

“Whether Section 1407 remand is appropriate for an action in any particular multidistrict docket is based upon the totality of circumstances involved in that docket.” *See, e.g., In re Columbia Healthcare Corp. Qui Tam Litig.*, 560 F. Supp. 2d 1349, 1350 (J.P.M.L. 2008); *In re Brand-Name Prescription Drugs Antitrust Litig.*, 170 F. Supp. 2d 1350, 1352 (J.P.M.L. 2001). Based on our review of the record, we believe that the following circumstances unique to this docket warrant remand of the MDL Coverage Action. First, the two insurance coverage actions were consolidated for all purposes under Rule 42 by the transferor court in late 2020, before the actions were transferred to the MDL. While the consolidation under Rule 42 is not dispositive of remand,⁶ we find it highly relevant here. The central issue in both actions is Nationwide’s alleged duty to provide coverage for consumer claims arising from Smitty’s allegedly defective 303 tractor hydraulic fluid products. Importantly, the ten insurance policies at issue in the *Hornbeck* Coverage Action also are at issue in the MDL Coverage Action and the complaints squarely raise the interpretation and application of the same provisions – for example, “occurrence,” “prior knowledge,” and “expected or intended injury” – to claims concerning the same allegedly defective product. Second, in the *Hornbeck* Coverage Action, the record shows that there are ongoing disputes over how to interpret these common provisions in the Eastern District of Louisiana transferor court. Thus, we find that the just and efficient conduct of the litigation would be served by remand of the MDL Coverage Action to the Eastern District of Louisiana, thus allowing the consolidated coverage actions to proceed together in the same court.

We encourage the parties, who are well-familiar with the common pretrial proceedings in the MDL, to direct the transferor judge to the proceedings in the MDL relevant to the coverage

⁵ Panel Rule 10.1 provides: “Typically, the transferee judge recommends remand of an action, or a part of it, to the transferor court at any time by filing a suggestion of remand with the Panel. However, the Panel may remand an action or any separable claim, cross-claim, counterclaim or third-party claim within it, upon: (i) the transferee court’s suggestion of remand, (ii) the Panel’s own initiative by entry of an order to show cause, a conditional remand order or other appropriate order, or (iii) motion of any party.” In considering the question of Section 1407 remand, we apply a deferential standard of review to the transferee judge’s determination.


⁶ In *Hall v. Hall*, 138 S. Ct. 1118 (2018), the Supreme Court observed that “consolidation is permitted as a matter of convenience and economy in administration, but does not merge the suits into a single cause, or change the rights of the parties, or make those who are parties in one suit parties in another.” *See id.* at 1118 (quoting *Johnson v. Manhattan R. Co.*, 289 U.S. 479, 496-97 (1933)). Thus, we reject Nationwide’s assertion that remand is “mandatory” by virtue of Rule 42 consolidation alone.

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actions, and to avail themselves of the documents, depositions, and rulings accumulated under the supervision of the transferee judge, who has ably handled the many challenges posed by this multi-faceted litigation.

IT IS THEREFORE ORDERED that the motion for Section 1407 remand is granted.

PANEL ON MULTIDISTRICT LITIGATION

A handwritten signature in cursive script, reading "Karen K. Caldwell", is positioned above a horizontal line.

Karen K. Caldwell

Chair

Nathaniel M. Gorton
David C. Norton
Dale A. Kimball

Matthew F. Kennelly
Roger T. Benitez
Madeline Cox Arleo

**IN RE: SMITTY'S/CAM2 303 TRACTOR HYDRAULIC FLUID
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SCHEDULE A

Western District of Missouri

NATIONWIDE AGRIBUSINESS INSURANCE COMPANY v. SMITTY'S SUPPLY, INC.,
ET AL., C.A. No. 4:21-00072
(E.D. Louisiana, C.A. No. 2:20-02892)